

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 30780 of 2005(L)

OS.603/2004 of PRL.M.C.,ERNAKULAM

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PETITIONERS:

1. RAJAN, S/O.GOPI, AGED 38 EYARS,
ATUKANDATHIL HOUSE, PONNURUNNI, POONITHURA,
VYTTILA P.O. KOCHI 19.
2. AMMINI, W/O.SUPRAN, AGED YEARS,
THOMMANPPARAMBIL, MULANTHURUTHY P.O. ERNAKULAM.
3. T.S.SHEEJA, W/O.KUTTAN, AGED 34 YEARS,
THOTTATHUMPARAMBIL, MULANTHURUTHY P.O.
ERNAKULAM.

BY ADV. SRI.SHAJI P.CHALY
SMT.K.S.SUMITHA
SMT.TRESSA VALANTEENA
SRI.GEEMON VARGHESE ALEX

RESPONDENTS:

1. MARY ABRAHAM, D/O.LATE K.J.ZACHARIAH,
KARINGATTIL HOUSE, STADIUM CROSS ROAD,
KOCHI 15.
2. THANKAMMA CHERIAN,D/O.LATE K.J.ZACHARIAH
KARINGATTIL HOUSE, STADIUM CROSS ROAD,
KOCHI 35.
3. SUSANNA ZACHARIAH, LATE K.J.ZACHARIAH,
KARINGATTIL HOUSE, STADIUM CROSS ROAD,
KOCHI 35.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX(WPC NO.30780/05)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT OF D2 DATED 30.9.2004.

EXT.P3: TRUE COPY OF THE WRITTEN STATEMENT OF D3 & D4 DATED 15.10.2004.

EXT.P4: TRUE COPY OF THE ORDER OF THE LEARNED MUNSIFF DATED 3.12.04.

EXT.P5: TRUE COPY OF I.A.2709/04.

EXT.P6: TRUE COPY OF I.A.NO.2768/04.

PIUS C. KURIAKOSE, J.

W.P.(C) No.30780 of 2005

Dated: 10th August, 2007

JUDGMENT

No representation for the petitioners. Service is completed on all respondents other than 2nd respondent. Though notice was tendered to the counsel for the 2nd respondent in the court below, he made an endorsement on the memo that he was unable to contact the respondents and notice should be issued in the address of the parties directly.

2. It is seen from the impugned order and the grounds raised in the Writ Petition that the grievance of the petitioners is that the written statement which was filed by them was not accepted to file on the ground that the same was filed after 90 days on receipt of summons by the petitioners. The court below obviously thought that it did not have power to receive the written statement if the same was filed after the statutory period of 90 days. The issue has now been settled by the judgment of the Supreme Court in **Kailash v. Nanhku** (2005(2) KLT 623). Accordingly, I set aside Ext.P4 and direct the court below to take a fresh decision on the question whether the written statement filed by the petitioners received on file in the light of the principles laid down by the Supreme Court in **Kailash v.**

Nanhku (supra). It is open to the court below to impose proper cost also even when it becomes inclined to receive the written statement in view of the principles laid down by the Supreme Court in the aforesaid judgment.

srd

PIUS C.KURIAKOSE, JUDGE